

ANDERSON EXHIBIT 17

Cardinal Health, Inc (Neil Warren)

0001

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS
3 - - - - -
4 IN RE: PHARMACEUTICAL) MDL NO. 1456
5 INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
6 PRICE LITIGATION) 01-CV-12257-PBS
7)
8 THIS DOCUMENT RELATES TO THE)
9 Consolidated New York County)
10 Actions, The California Action,))
11 and The Iowa Action)
12 - - - - -

(cross captions appear on following pages)

"HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY"
VIDEOTAPED DEPOSITION OF CARDINAL HEALTH, INC.
by NEIL WARREN - VOLUME I
Tuesday, September 9, 2008
Columbus, Ohio 43215
SUSAN L. COOTS
REGISTERED PROFESSIONAL REPORTER

0002

1 COMMONWEALTH OF KENTUCKY
2 FRANKLIN CIRCUIT COURT - DIV. I
3 - - - - -
4 COMMONWEALTH OF KENTUCKY, ex rel.)
5 GREGORY D. STUMBO, ATTORNEY GENERAL)
6 Plaintiff,) Civil Action
7 vs.) No. 04-CI-1487
8 ALPHARMA USPD, INC., et al.,)
9 Defendants.)
10 - - - - -

11

12

13 COMMONWEALTH OF KENTUCKY
14 FRANKLIN CIRCUIT COURT - DIV. II
15 - - - - -
16 COMMONWEALTH OF KENTUCKY,)
17 Plaintiff,) Civil Action
18 vs.) No. 03-CI-1134
19 ABBOTT LABORATORIES, INC.,)
20 Defendants.)
21 - - - - -

22

0003

1 COMMONWEALTH OF KENTUCKY
2 FRANKLIN CIRCUIT COURT - DIV. II
3 - - - - -
4 COMMONWEALTH OF KENTUCKY, ex rel.)
5 GREGORY D. STUMBO, ATTORNEY GENERAL)
6 Plaintiff,) Civil Action
7 vs.) No. 03-CI-1135
8 WARRICK PHARMACEUTICALS CORP.,)
9 et al.,)
10 Defendants.)
11 - - - - -
12
13 IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI
14 FIRST JUDICIAL DISTRICT
15 - - - - -
16 STATE OF MISSISSIPPI,)

Cardinal Health, Inc (Neil Warren)

20 Q. Are you familiar with that term;
21 contract net sell?

22 A. There -- yes.

0286

1 Q. What does that mean?

2 A. The contract net sell would be a
3 contract price and no upcharge, no down charge.

4 Q. Contract price between whom and whom?

5 A. Between the manufacturer and the
6 customer or even Cardinal and the customer that
7 there's no upcharge involved, or down charge.
8 Depending on how you want to look at it.

9 Q. So in that -- in that context, the --
10 the contract net sell price would be the
11 pharmacy's acquisition price, correct?

12 A. Correct.

13 Q. Let's take a look at Exhibit No. 2.
14 It's the Leader Drug Store Advantage Manual. And
15 just for the record, this is a business record of
16 Cardinal's that is it came from Cardinal's
17 business records and was maintained in the
18 ordinary course of Cardinal's business; is that
19 correct?

20 A. Yes.

21 Q. And among other things, this is
22 providing certain information to certain of

0287

1 Cardinal's retail pharmacy customers about
2 pricing for certain brand name drugs; is that
3 correct?

4 A. Yes.

5 Q. Okay. So if you could turn to the page
6 that has the Bates stamp in the lower -- in the
7 middle of 616187. Are you there? This is the
8 one --

9 A. 87. I'm sorry.

10 Q. 616187. This is the one with the page
11 that indicates the manufacturer is Abbott
12 Laboratories and shows a savings of up to 42
13 percent off invoice. Do you see that?

14 A. Yes.

15 Q. With the effective date of July 1st,
16 1997, through June 30th, 2001. Do you see that?

17 A. Yes.

18 Q. Now, I want to call your attention to
19 the -- the two tables at the bottom, under the
20 heading of Ery-tab, that is E-R-Y, dash tab,
21 profit Analysis Versus Competitive Item. And you
22 see there's a term there that says contract net

0288

1 sell under the preferred product for the Abbott
2 product; 333 milligrams tablet. Do you see that?

3 A. Yes.

4 Q. And I think you testified a moment ago
5 contract net sell is going to be the price paid
6 by the Cardinal customer who avails itself of
7 this particular product in this deal, correct?

8 A. Correct.

9 Q. And then to the left it says, "AWP,
10 less 12 percent." Do you see that?

11 A. Yes.

12 Q. And do you understand that to be an
13 example of a formula for reimbursement that the

Cardinal Health, Inc (Neil Warren)
 14 Cardinal customer might receive if it dispenses
 15 this drug? It's one we talked about, the various
 16 types of formulas that could be used. But do you
 17 recognize this as a sample of such a formula?
 18 MS. HANSEN: Object to form.
 19 MS. FUMERTON: Objection. Form.
 20 A. I don't know.
 21 Q. Okay. Well, you will agree with me --
 22 THE NOTARY: Who -- I'm sorry. Excuse

0289

1 me. who objected?
 2 MS. FUMERTON: Tara Fumerton.
 3 THE NOTARY: I'm sorry?
 4 MS. FUMERTON: Tara Fumerton. F-U-M-E-
 5 R-T-O-N.
 6 Q. Well, you will agree with me that the
 7 far right column says, "Profit Per Unit," and in
 8 this example it says \$20.46. Do you see that?
 9 A. I see that. Yes.
 10 Q. And do you see -- I have a calculator,
 11 if you would like to use it, but that that \$20.46
 12 is the difference between the AWP, less 12
 13 percent of \$31.66 and the contract net sell of
 14 \$11.20. Would you like a calculator?
 15 A. No. I got -- I got that one.
 16 Q. You agree with me? You agree with me?
 17 A. I do.
 18 Q. Okay. And we talked about earlier that
 19 profit for a pharmacy customer of -- of Cardinal
 20 is the function of its acquisition cost, which I
 21 think we said is the contract net sell, and the
 22 amount of reimbursement it might receive; is that

0290

1 correct?
 2 A. Yes.
 3 Q. So would you agree with me this is one
 4 example of the profit that a customer -- customer
 5 might earn if it were to purchase this particular
 6 product, and it represents that profit as the
 7 difference between AWP, minus 12 percent, and the
 8 contract net sell price?
 9 MR. STEPHENS: Objection.
 10 MS. FUMERTON: Objection.
 11 MR. STEPHENS: He already said he
 12 didn't agree with you. Asked and answered.
 13 A. I understand the difference to get the
 14 \$20.46, but I don't know what the AWP less 12
 15 represents.
 16 Q. Okay. Good enough. And then it has
 17 the competing product underneath it, and that is
 18 an E-Mycin 333 milligram tablet. Are you
 19 familiar with that product, by the way?
 20 A. Excuse me?
 21 Q. Are you familiar with that product?
 22 A. Yes.

0291

1 Q. Is that -- and that's manufactured by a
 2 different company other than Abbott, correct?
 3 A. Yes.
 4 Q. Okay. And again, this table is
 5 analyzing the profit between the Abbott preferred
 6 product and the competing product of E-Mycin,
 7 correct?

Cardinal Health, Inc (Neil Warren)

A. Yes.

Q. Okay. And it shows a profit per unit for the competing product of \$15.13. Do you see that?

A. Yes.

Q. And do you recognize that as the difference -- as the between the AWP less 12 percent column of \$44.75 and the net sell price of \$29.62?

A. Yes.

Q. So am I correct that the -- the purpose of this particular table is to show a potential Cardinal customer that it could earn more profit on the Abbott product than it could on the competitor product made by a manufacturer other

than Abbott?

MS. HANSEN: Objection to form.

A. That would be true.

Q. Okay. And this entire document, this Advantage manual is used as part of the -- the marketing of this particular product to Cardinal's customers, correct?

A. Correct.

Q. And I think you testified in response to Mr. Carroll's questions that the items contained in this document, particularly this analysis, this profit analysis, is something that's discussed with the manufacturer, in this case; Abbott, correct?

MS. HANSEN: Objection to form.

A. Correct.

Q. So Abbott is certainly aware that Cardinal has announced to its customers that, under this particular deal, it can make more profit with the Abbott product as compared to the competitor product to Abbott, correct?

MS. HANSEN: Objection. Form.

MS. FUMERTON: Objection. (Inaudible.)

THE NOTARY: I'm sorry. Could you repeat, please?

MS. FUMERTON: This is Tara Fumerton. Objection. Can't speak to Abbott's awareness.

THE NOTARY: I can't understand you. I'm sorry.

MS. HANSEN: Want to try one more time?

THE NOTARY: You're breaking up when you objected.

MR. CUTLER: I think she said, objection. Can't speak to Abbott's awareness.

THE NOTARY: And who is speaking now?

MR. CUTLER: Richard Cutler.

THE NOTARY: I'm sorry?

MS. HANSEN: Rich Cutler.

MR. CUTLER: Richard Cutler.

THE NOTARY: Okay. You guys are breaking up.

Q. So let me repeat the question then. As to this particular offer and this particular analysis that's being provided by Cardinal to its

potential retail pharmacy customers, Abbott

Cardinal Health, Inc (Neil Warren)
2 certainly is aware that Cardinal is providing
3 this profit analysis that compares the profit for
4 the Abbott product with the profit on the
5 competitor product, correct?

6 MS. HANSEN: Objection. Form. Lack of
7 foundation.

8 A. Correct.

9 Q. And beyond just knowing this, Abbott
10 wants Cardinal to provide this profit analysis to
11 potential customers, doesn't it?

12 MS. HANSEN: Same objection.

13 MS. FUMERTON: Same objection.

14 A. Yes.

15 Q. And it's communicated that desire to
16 Cardinal at some point?

17 A. Yes.

18 Q. And is that true -- I'll go through
19 some other examples, but is that true with regard
20 to the other profit analysis tables that are in
21 this document, Exhibit 3 (sic) for other
22 manufacturers? And if you want to go page by

0295 1 page, I'm happy to do that.

2 In fact, why don't we do that, just for
3 the record. Why don't you turn to the Bates page
4 numbered 616195. This is the page with Forest
5 Pharmaceuticals, up to 12 percent rebate on
6 Tiazac. Am I pronouncing that correctly?

7 A. Tiazac.

8 Q. Tiazac. And this is the offer from
9 January 1 to December 31st of 1999. Do you see
10 that?

11 A. Yes.

12 Q. And I won't go through it specifically,
13 but the same type of analysis is done here
14 showing the difference in profit on the Forest
15 Tiazac product as compared to the profit for the
16 competing product, the Cardizem CD capsule. Do
17 you see that?

18 A. Yes.

19 Q. And it shows a potential profit of
20 \$18.95 on the Forest product, as compared to
21 \$5.37 profit on the competing product, correct?

22 A. Correct.

0296 1 Q. And it goes through the same analysis,
2 that is the profit's derived by taking AWP, minus
3 12 percent, and subtracting the contract net sell
4 for both the Forest product and the competing
5 product, correct?

6 A. Correct.

7 Q. The same is true for the next one, two,
8 three pages; that is, pages 61696, 97, 98.
9 Similar analyses are done for other Forest
10 products, correct?

11 A. Correct.

12 Q. And as with the Abbott example, this
13 profit analysis that Cardinal is providing to its
14 potential customers is being done at the request
15 of Forest, correct?

16 MS. HANSEN: Objection to form.

17 A. Correct.

18 Q. Let's continue through the document.